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CLERK

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1945

No. 366

HAROLD H. EMMONS,
Petitioner (Appellant Below)

vs.

MAX SMITT, JOHN C. SPAULDING, EDWARD H. YOST, EMIL W. COLOMBO, ARTHUR A. KOCINSKI, THEODORE LEVIN, and STATE BAR OF MICHIGAN
Respondents (Appellees Below)

PETITION FOR CERTIORARI

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PETITION FOR WRIT OF CERTIORARI TO THE U. S. CIRCUIT COURT OF APPEALS (Sixth Circuit)

To the Honorable Supreme Court of the United States:

Petition of Harold H. Emmons, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit to review the decision of said court rendered the 25th day of June, 1945.

The opinion sought to be reviewed is Harold H. Emmons, plaintiff and appellant, vs. Max Smitt, John C. Spaulding, Edward H. Yost, Emil W. Colombo, Arthur A. Kocinski, Theodore Levin, and State Bar of Michigan, Defendants and Appellees (R. 86).

This court has jurisdiction to review said decision under 240 (a) of the Judicial Code (28 U.S.C. S347).

Opinion of the Circuit Court of Appeals was filed June 25, 1945 (R. 86). Petition for re-hearing was denied July 23, 1945, without opinion (R. 103). Issuance of mandate was stayed by order of that court dated the 13th day of August, 1945, for thirty days pending the application for writ of certiorari in this court.

The statute involved is the Federal Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14). The provisions of the United States Constitution involved are the 5th and 14th Amendments.

SUMMARY STATEMENT OF THE MATTER INVOLVED

In October, 1940, charges were filed against Appellant Emmons by a grievance committee of the State Bar of Michigan, claiming that he had been guilty of conduct unbecoming an attorney in his connection with the estate of George H. Cummings. They were based upon the claim that Emmons had by various devices converted monies of the estate to his own use. Emmons had practiced in both State and Federal Courts for over forty years without challenge to his professional conduct, and he maintained that his whole connection with the estate was highly ethical and beneficial to it, and that he had neither appropriated its assets or used them in any unprofessional, unethical or illegal manner.

Cummings died testate June 7, 1920, ostensibly leaving a considerable estate. In reality it was bankrupt (R. 5-6). Its assets consisted of cash $104.20, personalty approximately $5,000, and small equities in some eighty-four pieces of real property. Under Michigan law the estate

could only sell such interests as then existed. It could neither improve or subdivide the property. Over a million dollars were allowed by the court against the estate in claims. Faced with this situation and to realize something for the estate, Judge Durfee authorized Emmons to personally, and on his own account, become the actual purchaser of certain of these equities (R. 7). In each instance the court fixed the value of the estate's interest in excess of its real value and entered orders authorizing their sale (R. 7-8), and, on the coming in of the reports of sale, entered orders confirming them, all according to the statutes, decisions and the probate court practice of Michigan.

Emmons became the ultimate purchaser, paying in the amounts fixed by the court, subdivided three of the properties on his sole responsibility and individual account, sold them as lots, and executed hundreds of warranty deeds therefor guaranteeing title, and, in addition, obligated himself personally to install improvements amounting to approximately a million dollars (R. 11-13).

While engaged in this enterprise, which extended over upwards of ten years, his right to acquire title individually and subdivide in the manner described was challenged by purchasers of lots who claimed that he could not personally buy or acquire these equities or take title thereto because of his being a trustee or executor of the estate. For this purpose they began three suits against Emmons and his co-trustee and executrix in the Oakland Circuit Court in Chancery, the competent court of record in Michigan (R. 9-14). The first of them was tried in open court in September, 1924. After full hearing a decree was entered by the court finding:

(a) That the sales to Emmons were legal and binding upon the estate.

(b) That the absolute and complete title to the premises described was vested thereby in Emmons and all deeds executed by Emmons for lots in such subdivisions conveyed clear title.

(c) That neither the estate of Cummings nor its representatives had any interest or title therein.

Later, in November and December, 1924, like decrees were entered in the two remaining cases (R. 9-11, 14).

The State Bar of Michigan, through its grievance committee, now takes the position that the above orders of the Probate Court and decrees of the Circuit Court all final, binding and unappealed from, did not concern and were not binding on them, that the conveyances of title to Emmons under them were mere "wash" or "conduit" sales, and that notwithstanding Emmons having carried on these enterprises on his own account over a long period and involved himself personally in large financial obligations and warranties of title, the enterprises and their avails are construed by them as those of the estate and not those of Emmons personally (R. 19).

To settle this controversy, Emmons then filed a bill of complaint in the Circuit Court for Ingham County under the provisions of the Michigan Declaratory Judgment Act, naming the State Bar as party defendant, and praying for a judicial determination of the scope and effect of the orders and decrees herein mentioned as well as his rights thereunder. No answer was filed to his bill. Instead, defendant applied to the Supreme Court of Michigan for a

writ of prohibition against the Honorable Leland W. Carr, Circuit Judge of Ingham County, which, on December 29, 1943, through a divided (three for granting, two concurring in the result, and three dissenting), opinion was granted prohibiting Judge Carr from further proceeding in said case (R. 2-4, 20-24). It is the claim of Emmons that, as a citizen of the United States and Michigan, he was entitled to file such a bill for a declaratory judgment, the same as any other citizen, and that to deprive him of this right was contrary to the provisions of the Fourteenth and Fifth Amendments of the Federal Constitution and of the Civil Rights Act. The basis of the issuance of the writ of prohibition was that because appellant was a lawyer he could not as a citizen maintain such declaratory proceedings.

Emmons then filed a complaint (R. 1-27) in the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, claiming that the action of the Supreme Court of the state in denying him the right to proceed in the same manner as any other citizen could under the provisions of the Declaratory Judgment Act, presented a Federal question because it was in contravention of the due process and equal protection provision of the Fourteenth Amendment and also the Fifth Amendment of the Federal Constitution and clearly raised a federal question within the provisions of the Federal Civil Rights Statute—U.S.C.A. Title 28, Sec. 41 (14). The Bar and its committee did not answer Emmons' bill in the District Court and moved to dismiss before answer. The District Court determined that no federal question was presented by Emmons and granted the motion. The Circuit Court of Appeals affirmed the decision of the District Court.

QUESTIONS PRESENTED

1. Has petitioner been denied the due process and equal protection of the laws guaranteed to all citizens by the 14th Amendment of the Federal Constitution, by the denial to him of a right common to all citizens, namely, a hearing in open court upon proceedings for a declaratory decree.

2. Does the complaint filed in the Federal Court state a cause of action within the purview and intent of the Federal Civil Rights Statute—U.S.C.A. Title 28, Sec. 41 (14).

3. Can petitioner be thus denied the right guaranteed him by the 5th as well as the 14th Amendment to have declared and confirmed his rights in and to the real property purchased and paid for by him, and thereafter platted and conveyed to hundreds of persons by deeds containing covenants of warranty of title.

4. Where complaint is grounded upon the Civil Rights Statute, U.S.C.A. Title 28, Sec. 41 (14) is it necessary to specifically allege that $3,000 or more is involved in order that a federal court shall have jurisdiction.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

1. The United States Circuit Court of Appeals, Sixth Circuit, has decided an important question of Federal law, in conflict with the 5th and 14th Amendments of the Constitution of the United States and in conflict with the decisions of this court.

2. It appears from the record that a person who is a citizen of the United States has been discriminated against and denied his civil rights of a hearing in open court.

3. It clearly appears from the record that the Circuit Court of Appeals of the Sixth Circuit has misconstrued Federal Statutes.

4. It clearly appears from the record that unless the writ prayed for is granted, petitioner will have no redress for the infringement of his constitutional and civil rights.

5. This case presents an important issue in the domain of civil rights. In re Summers, decided June 11, 1945, Vol. 89 L. Ed. Adv. Op., P. 1305.

WHEREFORE, YOUR PETITIONER PRAYS that a writ of certiorari be issued out of and under the seal of this court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding that court to certify and send to this Court for review and determination, as provided by the Statute of the United States, a full and complete transcript of the record and proceedings in Case No. 9925, and entitled on its docket "Harold H. Emmons, Plaintiff and Appellant, vs. Max Smitt, John C. Spaulding, Edward H. Yost, Emil W. Colombo, Arthur A. Kocinski, Theodore Levin, and State Bar of Michigan, Defendants and Apellees," and that the judgment therein of said Circuit Court of Appeals be reversed by this Court, and that your Petitioner may have such other and further relief in the premises as to the court may seem just and proper.

Respectfully submitted,

Harold H. Emmons,
Petitioner.

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